

Ottinger

EMPLOYMENT LAWYERS

Ariel Y. Graff
ari@ottingerlaw.com

401 Park Avenue South
New York, NY 10016
(212) 571-2000

535 Mission Street
San Francisco, CA 94105
(415) 262-0096

January 18, 2017

BY ECF

The Hon. Brian M. Cogan
United States District Judge
Eastern District of New York

Re: Dalton, et al. v. Gem Financial Services, Inc., et al., No. 15-cv-05636 (BMC)

Dear Judge Cogan:

As Your Honor is aware, we represent Plaintiffs in the above-referenced action. We apologize for submitting successive letters on this issue (*see* ECF #56 [Defs.' letter]; #57 [Pls.' letter in opposition]; #58 [Defs.' 2nd letter]). Beyond what is stated in our initial letter today, we write for the limited purpose of respectfully noting that the certificate of service on the "Combined Discovery Demands" that Defendants attach to their reply letter reflects that the document was improperly served and never received by Plaintiffs' counsel (nor have Defendants otherwise served written discovery requests at any point during this litigation).¹ In any event, even had the document been properly served, the response deadline would have fallen outside the close of discovery. We therefore respectfully reiterate our request that the Court deny Defendants' application to reopen discovery, and permit this case to proceed to trial as scheduled, with the Joint Pretrial Order due on January 24, and Final Pretrial Conference on January 31.

Thank you for Your Honor's consideration.

Respectfully submitted,



Ariel Y. Graff

¹ The certificate of service indicates that the document was purportedly "served" via email addressed to George Vallas, Esq., a former attorney at my firm. The ECF docket reflects that Mr. Vallas formally withdrew from this matter more than one-year ago. His email address as stated in Defendants' certificate of service <george@ottingerlaw.com> is also inactive and returns automated "delivery failure" notifications.